G. R. S. 58]

Previous references.

1896-
~~191~~ .
(LR)

302
File No. ~~232~~
Serial Nos. 1-4

Later references.

LR. 3030/97
LR. 2750/01

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1—4

In ~~Part B~~ for Jan 98.

SUBJECT.

Transfers of Lands on the Security of which loans have been advanced

1 4263/R3078 553 21/22-12-96 from the Dy Comr Tumkur
Requests to be instructed whether transfers of lands on the security of which loans have been advanced, may be recognized where the transferee agrees to accept the liability to discharge the loan.

2 6392/R2066 14-1-98 To the Dy Comr Tumkur
Directs that the proposed transfer may be accepted

GPE—10,000—25-8-15

Copies

Noted
Approach.

1 Draft for appl

(Print in extenso)

Letter No. 553 dated 21st December, 1896, from the Dep.y Com.r Invercargill, soliciting instructions as to whether transfers of lands on the security of which loans for Irrigation wells have been granted, may be recognized by Govt.

Order — Although there is no express provision in the rules issued under Nos 103 dated 21st July, 1894, to meet the point raised by the Deputy Commissioner, Yet reading together paras 6-10 of the rules and considering the principle involved in them, there is sufficient ground to hold that transfers of such lands are allowed and may therefore be recognized by Govt. Where the Ayakat lands held under a separate Patta and the well concerned are considered as sufficient security for the discharge of the loan, which in case of default is recoverable as

Secn 7—a (2)

21—1—97

Recd 6 Ma.
21/1/97.

The incidents of the transferability of Kandyan paying land is one ordinarily attaching to a holding under Sec 7 of the L. D. Regulation. ~~But~~ ~~this is a case where the Crown has granted the Patta in consideration of the Ratemahatmaya having taken charge of the land and undertaken to pay the assessment thereon.~~ The registered occupant is entitled to relinquish his occupancy or any portion of it which is not less

than a recognised share
of a survey number in under Sec 71
favour of any other person
and of this right he cannot
be deprived except by legislation -
The person who accepts the
occupancy has however to
execute an agreement and
in the form 4 appendix D of
the L.R. Rules the transferee
binds himself "to pay any
outstanding balance of the
Revenue which may be yet
due to the Sarcar." The question
which arises under the rules
is whether the balance of
the loan under the Land
Improvement Loan Regulation
is included in the term "Revenue"
There is no express provision
in the L.R. Regulation excluding
the obligation to pay the balance
of the loan to the transferee; nor
is it laid down expressly in
the Land Improvement Loan
Regulation. In the latter
Sec 7 provides that the debt
when it becomes due shall
be recoverable from the borrower
or out of the land for the benefit
of which the loan has been
granted. Section 9 of the Regulation will
Rules framed under this Regn
is consistent with the above pro-

an arrear of Land Revenue,
it is immaterial whether
the borrower himself
pays the land assessment
and the special annual
charge, or a third person
having an interest in
the property pays them,
with a view to save the land
from being proceeded against
for the recovery of the money
due to Govt. But, if the
borrower chooses formally
to transfer the property
to another individual
and the latter consents
to take the place of the
borrower, a Raji Kabul-
nama in duplicate
may be permitted to be
duly presented and
enforced, one copy of the
Raji Kabul nama being
filed with the original
record of the Case & the
other sent to the Office of
the Sub Registrar for record.

Print

Draft ye
21/1/97

Secretary

To
1 The Dy Comr, Tumkur.
2 The Dy Comrs of other districts for info.
3 The Controller to the Mysore Govt.
4 The Inspector of Agricultl Banks &

limited possession
and ~~the~~ directs
that on default
the land & the will
shall be sold -
of the proceeds of the sale
shall the arrears
the deficit is to be
borne by Govt. It
is not clear that
by transferring an
occupancy the personal
obligation of the borrower
is extended to the
transferee and
the policy of the
Act is not applicable
so far as it is intended to
be that the land in
its improved condition
is held a sufficient
security for the
payment of the loan.
The exact significance
of the words "and
recovery cannot
otherwise be made"
is not very clear
except when the
borrower is possessed
of other property against
which proceedings
may be taken
under Sec 193

With construction
of rules

of the transferor right
which includes the
word "charge" which
has been also used
in the Rule Rules. But
it is doubtful whether
in the hands of the transferee this "charge"
enters into the term
"Revenues" which
he holds. Being to No form is prescribed
the Sarkar. A Misconst for the special Patta
requires elucidation prescribed under
and maybe considered Sec 18 of the Rule
under sub is doubtful
whether by merely
letting a Special
Patta not contem
plated by the R.
Regulation
we can go
beyond its
provisions
by rules framed
under another
Act which
contemplates
different
matter with
the T. of Regulation

In the meantime
the transfer is subject
the right of the occupant
and it must be accepted
if the requirements of Sec
71 of the T. of Regulation
have been complied with

There is no provision
in the Registration Act
under which the Instrument
executed by the transferee
can be sent to the Registrar
and it is unnecessary to
do so.

There is no objection to
a borrower transferring to
another his rights & liabilities
of such other accepting the same
and being recognized by the
as in the case of the
Village borrowed by

13.12.97

Rajam
16.12.97

6

175

Recd 2nd Decem 97

7-8-97

The Delawares usually do not touch the point in dispute. Certainly a borrower can transfer his liability & the transferee may accept it. But how is this to be legally evidenced - The original liability is evidenced by a registered order. But the subsequent transfer? Is it to be registered under the ordinary rules as there is no special provision - This matter has not been answered -

In the meanwhile I suggest that the transfer be accepted. The Dr Com's proposal to send the Warrants without any order is not to be entertained by any legal [illegible] & cannot be done -

Should you desire to know the views of the Secy & Counsel also Dept Advs

Mackd 20/12/97

Recd 24/12/97

Recd 23/12/97

Recd read & replied

Office Note Continued—

The Government Advocate who was requested to favour Govt with his opinion on the points raised by the Dip. Comr, now reports as follows:—

× Vide No. 6373 — R. 2367 dd 17th January 1894

× Vide letter No. 130 dd 31st January 1894

"I am of opinion that the "transfers may be recognised "and the repayment of the loan "may be enforced against the "transferee in the same man- "-ner as against the original "borrower, the land being "always a charge for the "debts under Section 7, clause "C. Regulation No. IV of 1892.

"With regard to the Mootcha- "-lika to be taken from "the transferee, I am of "opinion, that as the trans- "-feree takes the land "subject to all the encumbrances "already existing on the "land, no Mootchalika is "necessary, and if however "a Mootchalika is taken it

In re: Offr Dews

The modes of recovery [illegible] under Regl. IV of 1870 have been expressly specified in s. 7, and do not seem to include recovery from the transferee of the land [illegible] as apart from the land itself.

The alteration suggested by Offr Dewan would do, except that it proposes to give to the word "borrower" an extended signification that the word does not ordinarily bear or was apparently intended by the Regln to bear.

It seems preferable to add after "borrower" the words "and his heirs, [illegible] representatives and assigns," if an amendment of the Regln is considered necessary. A few insignificant verbal changes would also be incidentally necessary, such as "them" for "him" in cl (1)(a) - etc

Subj to Secy's instructions.

14/4/50

The City Deputy has since vacated his office as Uncle, the question is whether the Council should be called to fill Deputy - The vacancy

of Election ; as soon as possible
- but it should be
done so that after the
Congress there will
be no hindrance in the
execution of the
measures they may decide
upon. We only
- but it would be of
advantage if a special
Comment Session
Letters attached to
the Congress. I believe
that it does not.

Vide Letter for
further instructions on
action to be taken

15/4/98

RD-7Pm
15/4/98

Shaukat Ali to Mahatma Gandhi

Shaukat Ali to Mahatma Gandhi

Received Bombay 15/4/98

Rec'd. 18.4.98
6 P.M.
at Kathiawar
- but has
elected

Received Lahore 17/4/98

Received Lahore 17/4/98

Received Lahore 17/4/98

REVENUE DEPARTMENT
Gl. No. 4263
1896. 7E 3078
23 DEC. 96
WAN'S OFFICE

From The Deputy Commissioner
Taranaki District

To The Secretary to the
Govt. of Mangonui
Land and Rev Depts.

Dated 21st December 1896.

Despatched 22nd December 1896.

Received

General No. 553
No.

Enclosure No.

Requests to be instructed
whether transfers of lands
on the security of which
loans are advanced
may be recognized in
cases where the trans-
feree agrees to accept
the liability to discharge
the loan.

Mr Lucas Asst to Secretary
With a draft:
N
8/1/97

Section 4 Q.
No. 302 of 96
No. 1

AW 23/12

D. 7/1/97

Subject to draft #3
7/1/97

No 553 Deputy Commissioner's office

Jellalabad District

Dated 21st December 1896.

To The Secretary to the Government of Kyargoona, General and Revenue Department.

Sir,

I have the honor to state that on January 1892 a case of Khasra proceedings was referred to the Assistant Commissioner of Kyargoona in the Nira Valley, for contructing an irrigation well on Survey No 22 (part). On the completion of the well, a case order for Khasra proceedings was issued on 9th February 1895 in the name of the above applicant. Subsequent to the issue of the case order i.e. on the 7th September 1896, the Assistant Commissioner transferred the Patta of Survey No 22 (part) to Mir Nawab Khan Khanzada, who agreed to discharge the loan, in the manner stipulated for by the Assistant Commissioner.

Section L R
File No 309-0[illegible]
Serial No [illegible]

5

reconnue

Cour de Cassation

Vo 6392
" R. 2066 § 17.1.98
17

Cour, au rapport
de Conseiller
Lacoste, sur
les conclusions
conformes de M.
l'Avocat général
Desjardins;

Sur le moyen unique
pris de la violation
des articles 1134
et 1315 du Code
civil, en ce que
l'arrêt attaqué a
refusé de tenir
pour établies les
conventions
alléguées par
la demanderesse
et dont elle
offrait la preuve;

Attendu que
l'arrêt attaqué
constate que
la demanderesse
ne produit
aucun écrit
établissant
les conventions
qu'elle allègue
et qu'elle
offre de prouver
par témoins;

Attendu que
la preuve
testimoniale
n'est admise
que dans les
cas où la loi
l'autorise
expressément;

Attendu que
l'arrêt attaqué
ne contient
aucune
violation
des articles
invoqués
au moyen;

Rejette le pourvoi
formé contre
l'arrêt de la
Cour de Paris
du 5 Juillet 1897;

Condamne la
demanderesse
aux dépens
et à l'amende
de cent francs
envers l'Etat;

Ainsi jugé
et prononcé
par la Cour
de Cassation
(Chambre des
Requêtes)
au Palais de
Justice à Paris
le 4 Janvier
1898.

Les

Arrêt
3/1/98

Arrêt
4/1/98

Les Conseillers